
(2005) 01 GAU CK 0064
In the Gauhati High Court
Case No : F.A. No. 126 of 1996

Rebati Mazumdar and Another	Vs	APPELLANT
Nital Saha and Others		RESPONDENT

Date of Decision : 04-01-2005

Acts Referred:

Motor Vehicles Act, 1939 — Section 95, 96, 96(2), 97
Motor Vehicles Act, 1988 — Section 146, 147, 147(1), 147(2), 149
Railways Act, 1989 — Section 2
Road Traffic Act, 1930 — Section 10(3)
Workmens Compensation Act, 1923 — Section 14, 19, 2(1), 22, 3

Citation : (2005) GLT 387 Supp

Hon'ble Judges : T. Vaiphei, J;I.A. Ansari, J

Bench : Division Bench

Advocate : A.C. Bhowmik and D.C. Roy, for the Appellant; S.M. Ali, for the Respondent

Judgement

I.A. Ansari, J.—We have heard Mr. A.C. Bhowmik, learned Counsel, appearing on behalf of the Appellant, and Mr. S. Ali, learned Counsel, appearing on behalf of the insured Respondent. None has appeared on behalf of the employer-Respondent.

2. Before we frame the substantial questions of law, which this appeal has raised, a brief survey of the material facts and various stages which have led to the present appeal, is necessary and the same are set out herein below:

(i) The present Appellants made an application u/s 22 of the W.C. Act, seeking compensation of a sum of Rs. 5 lacs for the death of their son, Pradip Mazumdar. This application gave rise to TS (WC) No. 24/94 aforementioned, the case of the claimant-Appellants being, in brief, thus: The deceased Pradip Mazumdar, aged about 20 years, was employed by the opposite party No. 1 herein as an Assistant (helper) in respect of the latter's minibs bearing registration No. TR-01-1225. On 13.7.1994, while the said vehicle, on its way to Kamalpur from Agartala, was stopped at Baramura, for a passenger to alight from the bus, Pradip Mazumdar

(since deceased) also got down, but before he could completely re-enter into the bus, the same was driven by its driver rashly and negligently making Pradip Mazumdar fall from the bus, the fall having caused injuries to Pradip Mazumdar, whereupon the said injured was shifted to Teliamora rural hospital and, on being referred by the doctors from there to GB Hospital the said injured, while being carried to GB Hospital, succumbed to his injuries. The said deceased used to receive salary at the rate of Rs. 1,500/- per month and a daily allowance of Rs. 50/-, his total monthly earning, thus being Rs. 2,100/-. The claimants are parents of the said deceased, the age of the father being 42 years and that of the mother being 38 years. The vehicle was insured with the opposite party No. 3 and the same was driven by the opposite party No. 2.

(ii) The opposite party Nos. 1 and 2, who are registered owner and driver of the said vehicle respectively, filed their joint written statement, wherein while denying that there was any rashness or negligence on the part of the driver of the said bus, they admitted that the said deceased was Assistant (helper) in the said bus, but claimed that compensation, if any, was liable to be paid by the opposite party No. 3 herein as the vehicle stood insured with the opposite party No. 3 at the time of the said accident.

(iii) The opposite party No. 3 too, as insurer, filed a written statement in the said compensation proceeding, wherein it denied that the said deceased was employed by the opposite party No. 1 as an Assistant (helper) in the said vehicle and/or that the said deceased met with his death on account of any accident in which the said vehicle was involved. However, the facts that the said vehicle stood insured with the opposite party No. 3 and/or that the said insurance policy covered an Assistant (helper) employed in the said vehicle were not specifically denied and/or disputed by the opposite party No. 3.

(iv) In course of time, the claimants adduced evidence by examining one witness, namely father of the said deceased, who gave evidence supporting the case set up by the claimants including the fact that the said deceased used to receive Rs. 2,100/- per month from his employer, while working as an Assistant (helper) in the said bus and that he died in the accident arising out of and in the course of his employment. The evidence, so given, went wholly unchallenged by all the opposite parties.

(v) On conclusion of the hearing, the learned Commissioner passed the impugned order, dated 24.11.1995, aforementioned wherein, while holding to the effect that the said deceased had died in an accident arising out of and in the course of his employment as an Assistant (helper) in the said mini bus, took a view that the amount of Rs. 2,100/-, which the said deceased was claimed to have been receiving per month from his employer, was unreasonable and that the said deceased presumably earned Rs. 500/- per month as a helper. On the basis of the amount of earning of the said deceased, so presumed, the learned Commissioner held the claimants entitled to receive Rs. 44,800/- from the date of the accident and directed the opposite party No. 3 herein, as insurer of the

said vehicle, to pay the said compensation amount of Rs. 44,800/- with interest at the rate of 6% on the awarded amount within a period of one month failing which interest at the rate of 15% per annum would be payable from the date of the award till the date of the payment. Aggrieved by the amount of compensation so determined, the claimants have impugned the same in the present appeal.

3. At the time of hearing of the present appeal, it has been submitted, on behalf of the Appellants, that the learned Commissioner acted arbitrarily in holding that the said deceased, as a workman, used to earn Rs. 500/- per month, though the Appellants had adduced convincing evidence to prove that the said deceased used to earn, in all, Rs. 2,100/- per month. The determination of the quantum of earning of the said deceased by the Commissioner is, according to the Appellants, arbitrary and perverse inasmuch as there is no evidence on record to come to the finding that the said deceased earned only Rs. 500/- per month and that the finding ought to have been that the said deceased used to earn Rs. 2,100/- per month.

4. While the opposite party Nos. 1 and 2 have not contested the appeal, the appeal has been resisted on behalf of the insurer-Respondent, on the ground that the liability of an insurer, according to Section 14 of the W.C. Act, to make payment of the compensation amount determined by the Commissioner arises only when the employer is, in terms of Section 14 of the W.C. Act, becomes insolvent or enters into a contract or scheme of arrangement with his creditor or where the employer is a company, the company is being wound up. In other words, what is contended, on behalf of the insurer-Respondent, is that an insurer cannot be made, under the W.C. Act, directly liable to pay compensation unless the employer becomes insolvent or he makes composition with his creditors or where the employer happens to be a company, the company is being wound up. It is also submitted, on behalf of the insurer-Respondent, that the scheme of the W.C. Act shows that it is the employer, who is, primarily, responsible to pay compensation determined under the W.C. Act and, then, he can be indemnified by the insurer and only those employers can get themselves indemnified by the insurer, who satisfy the conditions embodied under Sections 14 of the W.C. Act.

5. On the basis of the submissions made by the parties concerned, this appeal gives rise to the following two substantial questions of law:

(i) Whether a Commissioner, appointed under the Workmen's Compensation Act, 1923, (hereinafter referred to as "the W.C. Act"), has the power to order directly an insurer to pay compensation to an injured workman or dependants of a deceased workman, who succumbs to the injuries sustained by him in a motor vehicular accident arising out of and in the course of his employment under an employer, who is registered owner of the motor vehicle, which was involved in the accident, without the employer having become, in terms of Section 14 of the W.C. Act, insolvent?

(ii) Whether, in the present case, the finding of the Commissioner with regard to the earnings of the deceased worker is perverse and, in consequence thereof, whether the amount of compensation awarded by the Commissioner is not sustainable in law and needs enhancement?

QUESTION No. 1.

6. While considering the question posed above, it is pertinent to note that there is no dispute before us that according to Section 3 of the W.C. Act, it is the employer, who is liable to pay compensation for personal injury caused to a workman by accident arising out of and in the course of his employment.

7. Since it is Section 3 of the W.C. Act, which, admittedly, makes the employer, primarily, liable for payment of compensation to workman, it is necessary to determine as to who is a "workman" within the meaning of W.C. Act. It is Section 2(1)(n) of the W.C. Act, which defines "workman". According to this definition clause, "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer's trade or business) who is-

(i) A railway servant as defined in Clause 34 of Section 2 of the Railways Act, 1989 (24 of 1989) not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

(ia) (a) A master, seaman or other member of the crew of a ship,

(b) A captain or other member of the crew of an aircraft,

(c) A person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

(d) A person recruited for work abroad by a company,

and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India.

8. What can be safely deduced from a bare reading of Section 2(1)(n) is that the W.C. Act makes provisions for compensation for all those persons, who fall within the definition of the word "workman" as given u/s 2(1)(n) of the W.C. Act, and that these workmen maybe persons recruited in the railways, ship, aircraft or motor vehicle. However, a closer reading of Section 2(1)(n)(ia)(c) shows that a workman includes not only a person employed as driver, helper, mechanic and cleaner, but also a person, who is employed in any capacity in connection with a motor vehicle. In short, any person, who is employed in any capacity in connection with a motor vehicle is a "workman" within the meaning of the W.C. Act and for the personal injury caused to him, the employer is liable to pay compensation if the injury is caused in an accident arising out of and in the course of his employment.

9. Can a claim for compensation be raised under any Act other than the W.C. Act for the death of, or for personal injury suffered by, a person, who is recruited in any capacity in connection with a motor vehicle? The answer to this question is not very far to seek, for, it is the Motor Vehicles Act, 1988 (hereinafter referred to as "MV Act"), which makes provisions, in general, for compensation to persons, who sustain injuries in motor vehicular accidents and/or to persons, who are legal representatives of the persons, who die in motor vehicular accidents, irrespective of the fact whether the injured, who survived or died, is or is not a workman. In other words, a claim for compensation for the death or injuries caused in a motor vehicular accident can be raised under the M.V. Act even by a "workman" defined by the W.C. Act, which includes not only a person employed as driver, helper, mechanic and cleaner, but also a person, who is employed in any capacity in connection with a motor vehicle, and the Claims Tribunal, constituted u/s 165 of the M.V. Act, is the competent Tribunal to determine the amount of such compensation.

10. What follows from the above discussion is that not only that it is the M.V. Act, which makes provisions for determination and payment of compensation for injuries caused or death occurred in a motor vehicular accident, but even the W.C. Act makes provisions for compensation for the injuries caused or death occurred in a motor vehicular accident, provided that the person concerned, who sustains injuries or dies, was recruited in any capacity in a motor vehicle and provided further that the injuries or death must have been suffered by such a workman in an accident arising out of and in the course of his employment. Such a workman cannot however, raise a claim for compensation under both the W.C. Act as well as the M.V. Act for, Section 167 of the M.V. Act, gives an option to him to raise his claim for compensation either under the W.C. Act or the M.V. Act, but not under both.

11. Since deceased Pradip Mazumder was, admittedly, recruited as a helper in a motor vehicle, a closer survey of the provisions of the W.C. Act and M.V. Act is imperative. In this regard, it is of great significance to note that the M.V. Act makes provisions for compulsory insurance in respect of compensation to third parties.

12. Chapter-XI of the Motor Vehicles Act deals with "Insurance of motor vehicles against third party risks". Section 146 lays down the necessity for insurance against third party risk and provides that "no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter".

13. Section 147 deals with "Requirements of policies and limits of liability". Sub-section (1) of Section 147 along with its proviso is relevant for our present purpose. Hence, it is extracted as under:

147. Requirements of policies and limits of liability.-(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

- (a) Is issued by a person who is an authorized insurer; and
- (b) Insures the person or classes of persons specified in the policy to the extent specified in Sub-section (2)-
- (i) Against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorized representative carried in the vehicle or damage to any property of the third party caused by or arising out of the use of the vehicle in a public place;
- (ii) Against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place;

Provided that a policy shall not be required-

(i) To cover liability in respect of the death, arising out of and in the course of his employment of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee-

- (a) Engaged in driving the vehicle, or
- (b) If it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or
- (c) If it is a goods carriage, being carried in the vehicle, or
- (ii) To cover any contractual liability.

14. What is of immense importance to note, now, is that while Sub-section (1) of Section 147 of the M.V. Act lays down the circumstances, when insurance coverage in respect of an employee is not necessary, it clearly makes exception, in this regard, in respect of those workmen, who are-

- (a) Engaged in driving the vehicle, or
- (b) If it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or
- (c) If it is a goods carriage, being carried in the vehicle, or

15. Thus, the proviso to Section 147(1) makes it clear that while no compulsory insurance is required to cover the liability of an employer for payment of compensation for the injuries caused to, or death of, every workman in an accident arising out of and in the course of employment, this exemption clause will not apply to the case of a driver, conductor, examiner of tickets or, if the vehicle is a goods carriage, the workman is carried in the vehicle.

16. In other words, while Sub-section (1) of Section 147 makes it compulsory for the owner of every motor vehicle to take out insurance coverage for the liability of payment of compensation, which may be incurred by him in respect of death of, or bodily injury to, any person, the proviso to Sub-section (1) of Section 147 clarifies that such a compulsory insurance is not required to cover the liability for compensation arising under the M.V. Act in respect of the death of, or bodily injury to, every workman arising out of and in the course of his employment, but if the workman is engaged in driving the vehicle or as a conductor or examiner of tickets or, if the vehicle is a goods carriage and the workman is carried in the vehicle, insurance coverage for such a workman would be mandatory.

17. In short, what Sub-section (1) of Section 147 read with the proviso thereto lays down is that while insurance coverage is compulsory for the liability, which the owner of a vehicle may incur, no such compulsory insurance coverage is required in respect of death of, or bodily injury caused to, a workman in an accident arising out of and in the course of his employment except if the workman is a driver or, if the vehicle is a public service vehicle, the workman is a conductor or examiner of tickets of such vehicle or, if the vehicle is a goods carriage, the workman is being carried in the vehicle.

18. What follows from the above discussion is that the M.V. Act carves out an exception from the operation of W.C. Act in respect of those persons, who are mentioned in Clauses (a), (b) and (c) of the proviso to Section 147 of the M.V. Act, namely, a person recruited as driver, conductor, examiner of tickets or, if the vehicle is a goods carriage, the workman is carried in the vehicle. In other words, while it will not be necessary for an employer, under the W.C. Act to take out insurance coverage compulsorily in respect of workmen working in his factory or even his vehicle, insurance coverage will be compulsory for those workmen, who are engaged in different capacities as mentioned in Clauses (a), (b) and (c) of the proviso, to Sub-section (1) of Section 147 of the M.V. Act, namely, driver, conductor, examiner of tickets or, if the vehicle is a goods carriage, the workman is carried in the vehicle.

19. In order to appreciate as to why a distinct scheme for compulsory insurance coverage has been provided under the M.V. Act, a brief history of the conditions, which led to the making of the provisions for compulsory insurance in respect of motor vehicles is apposite. In this regard, we can do no more than refer to the case of National Insurance Co. Ltd., Chandigarh Vs. Nicolletta Rohtagi and Others, wherein the Supreme Court observed and held, in this regard, as follows:-

10. Chapter-VIII of the 1939 Act and Chapter-XI of the 1988 Act have been enacted on the pattern of several English statutes which is evident from the report of "Motor Vehicles Insurance Committee, 1936-37". In order to find out the real intention for enacting Section 96 of the 1939 Act which corresponds to Section 149 of the 1988 Act, it is relevant to trace the historical development of the law for compulsory third-party insurance in England. Prior to 1930, there was

no law of compulsory insurance in respect of third-party rights in England. As and when an accident took place the injured (claimant) used to bring action against the motorist for recovery of damages. But in many cases it was found that the owner of the offending vehicle had no means to pay to the injured or the dependant of the deceased and in such a situation the claimants were unable to recover damages. It is under such circumstance that various legislations were enacted. To meet the situation, it is for the first time "The Third-party (Rights Against Insurers) Act, 1930" was enacted in England. The provision of the said Act finds place in Section 97 of the 1939 Act which gave to the third party a right to sue directly against the insurer. Subsequently "the Road Traffic Act, 1930" was enacted which provided for the compulsory insurance of motor vehicles. The provision of the said Act it is engrafted in Section 95 of the 1939 Act and Section 146 of the 1988 Act. It is relevant to notice that u/s 38 of the English Act of 1930, certain conditions of insurance policy were made ineffective so far as third parties were concerned. The object behind the said provision was that the third-party should not suffer on account of failure of the insured to comply with those terms of the insurance policy.

11. Subsequently in 1934, the second Road Traffic Act was enacted. The object of the said legislation was to satisfy the liability of the insured. Under the said enactment three actions were provided. The first was to satisfy the award passed against the insured. The second was that, in case the insurer did not discharge its liability the claimant had the right to execute decree against the insurer. However, in certain events, namely, what was provided in Section 96(2)(a) which corresponds to Section 149(2)(a) of the 1988 Act, the insurer could defend his liability. The third action provided for was contained in Section 10(3) of Road Traffic Act. Under the said provision, the insurer could defend his liability to satisfy decree on the ground that insurance policy was obtained due to misrepresentation or fraud. The said provision also finds place in Section 149(2) (b) of the 1988 Act. While enacting the 1939 Act and the 1988 Act and Section 149 of the 1988 Act. It may be remembered that neither the 1939 Act nor the 1988 Act conferred greater rights on the insurer than what had been conferred in English law. Thus, in common law, an insurer was not permitted to contest a claim of a claimant on merits i.e. offending vehicle was not negligent or there was contributory negligence. The insurer could contest the claim only on statutory defences specified for in the statute.

12. We have traced the legislative history of English law as regards liability of an insurer in the event of a motor accident in respect of third-party right not for interpreting Sections 149, 170 of the 1988 Act, but only for showing that while enacting Chapter-VIII of the 1939 Act or Chapter-XI of the 1988 Act, the intention of the legislature was to protect third-party rights and not the insurer.

28. We have noticed the legislative development in regard to third-party rights in England and found that the object of those legislation was to protect the interest of third-party rights. The 1939 Act as well as the 1988 Act both were enacted on

the pattern of English statutes with the object to relieve the distress and miseries of victims of accidents and reduce the profitability of the insurer in regard to occupational hazard undertaken by them by way of business activities and not to promote business interests of insurance companies even though they may be nationalized companies.

29. For the aforesaid reasons as well as that the learned Judges in United India Insurance Co. Ltd. have failed to notice the limited grounds available to an insurer u/s 149(2) of the Act we are of the view that the decision in United India Insurance does not lay down the correct view of law.

20. Section 147, thus, makes it imperative to insure all vehicles, which are to be used in public places, the object being that if a third party suffers any damage due to the use of the vehicle in a public place, he would be able to get damages for the same straightway from the insurer and the recoverability of such damages would not depend upon the financial condition of the driver or the owner of the vehicle.

21. What emerges from the above discussion is that unlike the M.V. Act, the W.C. Act does not, as such, make it mandatory for the "employer" to insure the workman for indemnification of his legal liability under the W.C. Act. As already indicated hereinabove, the "insurer" figures, in the realm of the W.C. Act, by virtue of the statutory mandate of Section 147(1) of the M.V. Act, for, Section 147 of the M.V. Act requires the owner of every vehicle to compulsorily insure the vehicle against certain risks. Under the said provisions of the M.V. Act, the owner of every vehicle is required to insure his vehicle against the risk of death or bodily injury caused to, his driver, conductor or ticket checker and if it is a goods vehicle, then, any employee who is being carried in the vehicle.

22. A claim for compensation by the above classes of persons, namely, driver, conductor, ticket checker and the employee, who is carried in the goods vehicle, may, on account of death or bodily injury, arise under the provisions of either the M.V. Act or the W.C. Act. In terms of Section 167 of the M.V. Act, the forum for such compensation is either Motor Accident Claims Tribunal or the Commissioner, Workmen's Compensation Act. Though in the light of Section 167 of the M.V. Act, the option for selection of the forum is of the employee/workman, but the relief cannot be sought from both the fora.

23. At this point, it may be noted that under the provisions of the W.C. Act as the definition of the term "workman" given in Section 2(l)(n)(ia)(c) thereof conveys, the "employer" is liable to pay compensation to a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicles, but such an "employer", as an insured, can be, generally, indemnified by an "insurer", under a policy of insurance, only in respect of his liabilities towards that particular class of employees, who are mentioned in Section 147 of the M.V. Act, namely, driver, conductor, ticket checker and if it is a goods vehicle, any employee, who is being carried in such a goods vehicle inasmuch as the

liability of the "insurer" to indemnify the "employer" is (unless the policy, otherwise, indicates) restricted only to such class of persons as mentioned in Section 147 of the M.V. Act. It is, therefore, clear that the liabilities of an "employer" and an "insurer" under the W.C. Act vary and, in certain cases, the "insurer", may not be liable to indemnify the insured (i.e. employer) in respect of his liability for compensation to his employees out of the use of his motor vehicle, notwithstanding the fact that the vehicle was covered under a policy of insurance. Thus, the defences of the "insurer" may not always be qua insured and there may be a clash of interest between them.

24. Notwithstanding what has been pointed out above, the fact that the provisions contained in the W.C. Act and M.V. Act shall be read as a well-knit scheme for payment of compensation and that for a person, who is engaged as a workman in respect of a vehicle and dies or sustains injury in an accident arising out of and in the course of his employment, the case for compensation shall be considered a little differently from the ones, who work in any other establishments, such as, factory, etc. is clear from the case of Ved Prakash Garg Vs. Premi Devi and others, wherein the Apex Court observed:

11. We may now turn to the relevant provisions of the Motor Vehicles Act. Reference to these provisions becomes necessary because the workmen concerned suffered personal injuries of fatal nature while they were working on motor vehicles of their employers. If they had suffered from any personal injuries during the course of and arising out of the employment while working in the factory premises of the employers or while carrying on their service obligations as employees at any other place under the instruction of the employers, the question of interaction of the Compensation Act and the Motor Vehicles Act would not arise and such claims for compensation would have squarely been governed only by the Compensation Act.

25. The fact that the insurer will be statutorily as well as contractually liable to make good the claim for compensation arising out of the employer's liability computed as per the provisions of the W.C. Act if the workman is a person engaged in a motor vehicle can no longer remain in dispute after the decision in Ved Prakash Garg Vs. Premi Devi and others, , wherein the Apex Court observed as follows:

13. The question poses for our consideration is required to be resolved in the light of the aforesaid statutory schemes of the two interacting Acts. It is not in dispute and cannot be disputed that the Respondent-insurance companies concerned will be statutorily as well as contractually liable to make good the claim for compensation arising out of the employers' liability computed as per the provisions of the Companies Act. The short question is whether the phrase "liability arising under the Compensation Act" as employed by the proviso to Sub-section (1) of Section 147 of the Motor Vehicles Act and as found in proviso to Clause (i) of Sub-section (1) of Section II of the Insurance Policy, would cover only the principal amount of compensation as computed by the Workmen's

Commissioner under the Compensation Act and made payable by the insured employer or whether it could also include interest and penalty as imposed on the insured employer under contingencies contemplated by Section 4A(3)(a) and (b) of the Compensation Act.

26. In fact, in the case of *Ved Prakash Garg v. Premi Devi* (supra), it was not disputed that the insurer will be liable to pay compensation to the workman as per the amount determined by the Commissioner under the W.C. Act. What was disputed was whether the insurer will be liable to pay penal interest imposed on the employer and the Apex Court answered the question by holding that the insurer would not be straightway liable to pay the penal interest. This position of law is clear from the observations made in the *Ved Prakash Garg* (supra), which run as follows:

On a conjoint operation of the relevant schemes of the aforesaid twin Acts, in our view, there is no escape from the conclusion that the insurance companies will be liable to make good not only the principal amounts of compensation payable by insured employers but also interest thereon, if ordered by the Commissioner to be paid by the insured employers. Reasons for this conclusion is obvious. As we have noted earlier the liability to pay compensation under the Workmen's Compensation Act gets foisted on the employer provided it is shown that the workman concerned suffered from personal injury, fatal or otherwise, by any motor accident arising out of and in the course of his employment. Such an accident is also covered by the statutory coverage contemplated by Section 147 of the Motor Vehicles Act read with the identical provisions under the very contracts of insurance reflected by the policy which would make the insurance company liable to cover all such claims for compensation for which statutory liability is imposed on the employer u/s 3 read with Section 4A of the Compensation Act. All these provisions represent a well-knit scheme for computing the statutory liability of the employers in cases of such accidents to their workmen.

27. We may also mention here that in *The Oriental Fire and General Insurance Company Vs. Smt. Nani Bala Devi and Another*, , B.L. Hansaria, J., as his Lordship then was, considered the very same question which has been raised in the present appeal, and answered the same by holding, for the reasons assigned in his decision that a conjoint reading of the M.V. Act and the W.C. Act shows that the provisions of these two Acts cannot be read in isolation, particularly, when the M.V. Act specifically states that a policy of insurance cannot exclude the liability arising under the W.C. Act and that the expression "any person", occurring in Section 19 of the W.C. Act must be held to cover the insurer as well. This decision was considered by the Apex Court in *Ved Prakash Garg Vs. Premi Devi* and others, and no observation was made therein by the Apex Court to show that what had been held therein was incorrect.

28. What emerges from the above discussion is that the two Acts, namely, the W.C. Act and the M.V. Act depict a well-knit scheme providing for compensation

to the workmen. While the W.C. Act does not make it mandatory for an employer to have insurance against the liability for payment of compensation that he may incur towards every workman, Section 147 of the M.V. Act makes it mandatory for the employer to have insurance policy covering the risk of accident against certain classes of employees, namely, driver, conductor, ticket checker and employee carried in a goods carriage. The workman has the freedom to raise the claim for compensation either under the W.C. Act or M.V. Act; but whatever amount of compensation is determined-be such determination by a Commissioner under the W.C. Act or a Claims Tribunal under the M.V. Act, the insurer remains liable directly to make payment to the workman concerned.

29. In other words, the W.C. Act draws a distinction between the workmen, who are engaged in motor vehicles, and the workmen, who are engaged in factory and other establishments. Even under the W.C. Act, the insurer, in the case of a workman employed in a motor vehicle, would be liable to pay compensation directly to those workmen, who are covered by the proviso to Sub-section (1) of Section 147 of the M.V. Act, namely, driver, conductor, ticket checker and employee carried in a goods carriage notwithstanding the embargo placed by Section 14 of W.C. Act and it would not be required, for the purpose of making payment of such compensation by the insurer, that the employer has become insolvent.

30. We have already indicated hereinabove that notwithstanding the embargo placed by Section 14 of the W.C. Act, those workmen, who are covered under the proviso to Sub-section (1) of Section 147 of the M.V. Act namely, the driver, conductor, ticket checker and the workmen carried in a goods carriage i.e. those workmen, who fall within the categories (a), (b) and (c) of the proviso to Sub-section (1) of Section 147 of the M.V. Act, the insurer is bound to pay compensation straightway to the workmen without the employer having become insolvent, the question, now, is as to whether an insurer would be liable to pay compensation to a workman engaged in a motor vehicle in any capacity other than those, who does not fall within the categories (a), (b) and (c) aforementioned? There is, to our mind, no reason why those workmen in whose favour provisions of compulsory insurance have not been made under the M.V. Act, but are nevertheless covered by an insurance policy, be not given the same benefit as are available to those workmen, who fall within the categories mentioned in (a), (b) and (c) of the proviso to Sub-section (1) of Section 147 of the M.V. Act. In short, when those workmen who are covered under the categories (a), (b) and (c) aforementioned, are entitled to be paid compensation directly without the embargo placed by Section 14 of the W.C. Act coming into play, there is no reason why the same benefit shall not be made available in respect of those workmen, who, though do not fall within the categories mentioned in Clauses (a), (b) and (c) aforementioned, are nevertheless covered by an insurance policy.

31. We must, however, hasten to add that merely because of the fact that a

person engaged, in any capacity in a motor vehicle is a workman within the meaning of the W.C. Act, it will not necessarily mean that in all cases and invariably, the insurer would be directly liable to pay compensation to such a workman, for, while the W.C. Act makes any person recruited in any capacity in a motor vehicle a workman, provisions for compulsory insurance has been made, under the proviso to Sub-section (1) of Section 147, in respect of driver, conductor, ticket checker and those workmen, who are carried in a goods carriage.

32. To our mind, the realistic interpretation of the two schemes of the Acts, namely, M.V. Act and W.C. Act is that in general, an insurer will not be liable to pay compensation directly to a workman under the W.C. Act unless conditions precedent embodied in Section 14 of the W.C. Act are satisfied, i.e., until the employer becomes insolvent or makes a composition or scheme of arrangement with his creditors or if the employer is a company, the company is in the process of being wound up; but this general scheme envisaged by W.C. Act is subject to an exception created under the M.V Act in the case of certain employees, who are engaged in a motor vehicle, those employees being the ones, who are mentioned in Clauses (a), (b) and (c) of the proviso to Sub-section (1) of Section 147 of the M.V. Act aforementioned. In other words, notwithstanding the fact that an insurer is not directly liable to pay compensation to a workman until conditions precedent u/s 14 of the M.V. Act are satisfied, the insurer will be bound to directly pay compensation to those categories of workmen, who are mentioned in Clauses (a), (b) and (c) aforementioned. This benefit as regards the payment of compensation shall also be available to a workman, who is engaged in any capacity in a motor vehicle and for whom compensation is determined under the W.C. Act, provided that the workman is one in respect of whom insurance policy has been obtained by the employer, though the workman does not fall within any of the categories of workmen under Clauses (a), (b) and (c) aforementioned for whom insurance coverage is mandatory.

33. We may also pause here to point out that it is Section 19 of the W.C. Act, which empowers the Commissioner appointed under the W.C. Act, to decide the question of liability with regard to payment of compensation. Section 19 runs as follows:

19. Reference to Commissioners-

(1) if any question arises in any proceedings under this Act to the liability of any person to pay any compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by a Commissioner.

(2) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act.

34. The expression "liability of any person", in the context of what we have already pointed out above, means and includes, to our mind, not only the employer but also the insured.

35. In the light of what we have discussed above it is clear that the words "any person", occurring in Section 19 mean that when the question of fixing the liability for payment of compensation is raised in a proceeding under the W.C. Act arising out of a motor vehicular accident, the Commissioner is empowered to fix the liability on the insured too, provided that the relevant insurance policy covers the workman concerned irrespective of the fact whether the M.V. Act provides for compulsory insurance coverage in respect of such a workman or not.

36. Because of what have been discussed and pointed out, we answer the question No. (i) in the affirmative and hold that the Commissioner, appointed under the W.C. Act, has the power to direct an insurer to pay compensation for the death of, or bodily injury to, a workman recruited in any capacity in a motor vehicle if the death of, or bodily injury to, the workman has been caused in a motor vehicular accident arising out of and in the course of his employment as a workman under an employer, who is a registered owner of the vehicle, provided that the insurance coverage for such a workman exists irrespective of the fact whether such insurance coverage is, under the M.V. Act, mandatory or not.

QUESTION No. 2.

37. From a bare reading of the materials on record including the impugned award, what transpires is that the clear evidence adduced, on behalf of the claimants, was that deceased Pradip Mazumdar used to earn Rs. 1,500 per month and a daily allowance of Rs. 50, his total monthly earning, thus, being Rs. 2,100/-. The learned Commissioner has opened to the effect that the evidence so given is not believable and accordingly held that the said deceased used to earn Rs. 500/- per month. When the evidence given by the claimants that the total earning of the said deceased per month was Rs. 2,100 and this evidence remained unchallenged, it was nothing, but arbitrary on the part of learned Commissioner, to hold, without even an iota of evidence being available on record, that the said workman used to earn not Rs. 2,100 but Rs. 500 per month. Since the finding, so reached, by the learned Commissioner is without any evidence on record and, in fact, wholly against the evidence on record, such a finding must be held to be perverse and needs to be interfered with.

38. In view of the what we have pointed out above, we have no hesitation in holding that the learned Commissioner's finding that the said deceased workman was earning Rs. 500/- per month is perverse and that the deceased ought to have been held to have been earning Rs. 2,100 per month. When so held, the compensation, by applying the factor of 224 comes to the tune of Rs. 1,88,160/-. This amount shall be paid to the Appellants with interest @ 6% per annum on the awarded amount within a period of two months from today and, in the event of failure, to pay the interest so determined, the Respondent No. 3 shall pay

interest @15% per annum on the awarded amount till realization of the entire dues.